

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

FILED

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COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO
Case No. 90-2491
CLERK OF COURTS
Hon. J. Ronald Bowman

BROWNING-FERRIS INDUSTRIES
OF OHIO AND MICHIGAN, INC.
P.O. Box 5069
Point Place Station
Toledo, Ohio 43611

Plaintiff,

v

DAVID M. YEAGER,
4805 Springbrook
Toledo, Ohio 43615

Defendant-Counter Plaintiff,

v

BROWNING-FERRIS INDUSTRIES OF
OHIO AND MICHIGAN, INC.

Plaintiff-Counter Defendant.

COUNTER COMPLAINT

COUNT I

JURISDICTION

1. Defendant-counter plaintiff, David M. Yeager, is an individual residing in Lucas County, Ohio, and is the assignee of Dunrite Equipment Ltd. d/b/a Community Disposal Service.

2. Plaintiff-counter defendant, BROWNING-FERRIS INDUSTRIES OF OHIO AND MICHIGAN INC. (BFIOM), is an Ohio corporation, with its principal place of business located in Erie, Michigan, and is doing business in Lucas County, Ohio.

3. This action for monetary damages involves an amount in controversy in excess of Ten Thousand Dollars (\$10,000).

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COUNT II

DEFAMATION

4. Defendant-counter plaintiff, David M. Yeager, realleges and incorporates by reference all of the allegations contained in Paragraphs 1 through 3.

5. Plaintiff-counter defendant, BFIOM, prepared a press release with the knowledge and intent that various articles would be published in the Wall Street Journal, the Toledo Blade, the Lorain Journal and other newspapers purporting to be a true and accurate account of the defendant-counter plaintiff's alleged involvement in a conspiracy in restraint of trade, including but not limited to the following articles:

- a.) "2 Waste Firms Agree to Plea In Price-Fixing", The Toledo Blade, Friday, October 30, 1987.
- b.) "Waste Firm Spokesman Blames Man", The Lorain Journal, Tuesday, August 16, 1988.
- c.) "Two Waste Firms To Pay \$700,000 In Ohio Lawsuit", The Wall Street Journal, Tuesday, August 16, 1988.

6. The above-mentioned articles constituted a publication to third parties by plaintiff-counter defendant, BFIOM, of false and defamatory statements, insinuations, implications and/or innuendos of and concerning the defendant-counter plaintiff, to the effect that defendant-counter plaintiff was responsible for any and all antitrust activities for which plaintiff-counter defendant had admitted guilt.

7. In so publishing these false and defamatory statements, insinuations, implications and innuendos, plaintiff-counter defendant, BFIOM, acted negligently and/or with knowledge of falsity or reckless disregard of the truth of the said publications.

8. The false statements, insinuations, implications and/or innuendos contained in the above mentioned articles are defamatory per se.

9. Plaintiff-counter defendant is a private individual.

10. The abovementioned statements were made by plaintiff-counter defendant in the absense of a privilege or legal justification.

11. As a direct and proximate result of plaintiff-counter defendant's publication of the above mentioned articles and the defamatory material contained therein, defendant-counter plaintiff has been caused to suffer damages including, but not limited to, damage to reputation and standing in the community, extreme humiliation, mental and physical pain and suffering, aggravation of a pre-existing chronic ulcer condition, economic damages and attorneys' fees.

WHEREFORE, defendant-counter plaintiff, David M. Yeager, respectfully prays this Honorable Court to award defendant-counter plaintiff actual, exemplary and punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000) as this Court shall deem to be equitable and just.

COUNT III

FALSE LIGHT - INVASION OF PRIVACY

12. Defendant-Counter Plaintiff realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 11.

13. By publication of the above mentioned articles, plaintiff-counter defendant, BFIOM, placed the defendant-counter plaintiff in a false light before the public in general.

14. The false light in which the defendant-counter plaintiff was cast by plaintiff-counter defendant, BFIOM, would be highly offensive to a reasonable person.

15. In publishing the above mentioned articles, the plaintiff-counter defendant, BFIOM, had knowledge of, and/or acted with reckless disregard of, the falsity of the defamatory statements, insinuations, implications and/or innuendos they contain and the false light in which the defendant-counter plaintiff was placed.

16. As a direct and proximate result of plaintiff-counter defendant's invasion of defendant-counter plaintiff, David M. Yeager's privacy, defendant-counter plaintiff has been caused to suffer damages including, but not limited to, damage to reputation and standing in the community, extreme humiliation, and mental and physical pain and suffering, and aggravation of a pre-existing chronic ulcer condition.

WHEREFORE, defendant-counter plaintiff, David M. Yeager, respectfully prays this Honorable Court to award defendant-counter plaintiff actual, exemplary and punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000) as this Court shall deem to be equitable and just.

COUNT IV

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

17. Defendant-Counter Plaintiff realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 16.

18. Plaintiff-counter defendant's publication of the above mentioned articles constituted extreme and outrageous conduct by which plaintiff-counter defendant intended to and did in fact cause severe emotional distress to the defendant-counter plaintiff, David M. Yeager.

19. As a direct and proximate result of plaintiff-counter defendant's publication of the above mentioned articles and the defamatory material contained therein, defendant-counter plaintiff has been caused to suffer damages including, but not limited to, damage to reputation and standing in the community, extreme humiliation, mental and physical pain and suffering, economic damages and attorneys' fees.

20. Plaintiff-counter defendant, BFIOM, filed numerous causes of action against the defendant-counter plaintiff for

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indemnification of antitrust fines, although plaintiff-counter defendant knew that said causes of action had no valid basis in law or fact: That the above mentioned causes of action include;

- a.) Browning-Ferris Industries of Ohio and Michigan, Inc., v. David M. Yeager; Case No. 90-2491;
- b.) David M. Yeager v. Brown-Ferris Industries of Ohio and Michigan, Inc.; Counter Complaint, Case No. 89-2332;
- c.) State of Ohio, ex rel. Anthony J. Celebrenze, Jr., v. Browning-Ferris Industries of Ohio and Michigan, Inc.; Third-Party Complaint, Case No. 86-7387.

21. The above-mentioned causes of action were pursued by the plaintiff-counter defendant in order to harass, ridicule, intimidate and silence the defendant-counter plaintiff and place financial hardship on the defendant-counter plaintiff.

22. Plaintiff-counter defendant's conduct in pursuing these causes of action constituted extreme and outrageous conduct by which plaintiff-counter defendant intended to and did in fact cause severe emotional distress to the defendant-counter plaintiff.

23. As a direct and proximate result of plaintiff-counter defendant's unlawful pursuit of the defendant-counter plaintiff through the use of the instrumentalities of this Honorable Court, defendant-counter plaintiff has been caused to suffer damages including, but not limited to, damage to reputation and standing in the community, extreme humiliation, mental and

WHEREFORE, defendant-counter plaintiff, David M. Yeager, respectfully prays this Honorable Court to award defendant-counter plaintiff actual, exemplary and punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000) as this Court shall deem to be equitable and just.

COUNT V

ABUSE OF PROCESS

24. Defendant-Counter Plaintiff realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 23 above.

25. Plaintiff-counter defendant, BFIOM, has improperly filed numerous lawsuits against the defendant-counter plaintiff, David M. Yeager, pursuant to an unlawful ulterior motive.

- a.) Browning-Ferris Industries of Ohio and Michigan, Inc., v. David M. Yeager; Case No. 90-2491;
- b.) David M. Yeager v. Brown-Ferris Industries of Ohio and Michigan, Inc.; Counter Complaint, Case No. 89-2332;
- c.) State of Ohio, ex rel. Anthony J. Celebrenze, Jr., v. Browning-Ferris Industries of Ohio and Michigan, Inc.; Third-Party Complaint, Case No. 86-7387.

26. Plaintiff-counter defendant's ulterior motive in bringing the above mentioned suits has been to cause the defendant-counter plaintiff, David M. Yeager, severe emotional distress and to intimidate, silence and harass defendant-counter

plaintiff; as such plaintiff-counter defendant, BFIOM, has abused its right of process.

27. Plaintiff-counter defendant's ulterior motive is evidenced by the plaintiff-counter defendant's filing of a declaratory judgment complaint against defendant-counter plaintiff for indemnification with the knowledge that defendant-counter plaintiff was an immunized witness and expected to give testimony adverse to plaintiff-counter defendant in the case of State of Ohio, ex rel. Anthony J. Celebrezze, Jr., v. Browning-Ferris Industries of Ohio and Michigan, Inc.; Third-Party Complaint, Case No. 86-7387.

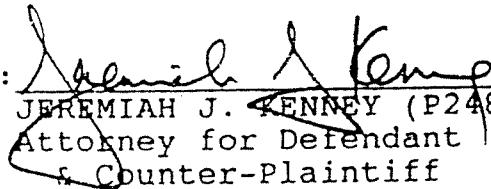
28. Plaintiff-counter defendant has abused its right of process and has caused the defendant-counter plaintiff severe emotional distress.

29. As a direct and proximate result of plaintiff-counter defendant's patterned abuse of process, defendant-counter plaintiff has been caused to suffer damages, including but not limited to, damage to reputation and standing in the community, extreme humiliation, mental and physical pain and suffering, aggravation of a pre-existing chronic ulcer condition, economic damages and attorneys' fees.

WHEREFORE, defendant-counter plaintiff, David M. Yeager, respectfully prays this Honorable Court to award defendant-counter plaintiff actual, exemplary and punitive

damages in an amount in excess of Ten Thousand Dollars (\$10,000) as this Court shall deem to be equitable and just.

KITCH, SAURBIER, DRUTCHAS,
WAGNER & KENNEY, P.C.

BY: 

JEREMIAH J. KENNEY (P24810)
Attorney for Defendant
& Counter-Plaintiff
One Woodward Avenue
Tenth Floor
Detroit MI 48226
(313) 965-7411

Dated: September 26, 1990

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO *FILED* LUCAS COUNTY

Oct 1 10 07 AM '90

CASE NO. 90-2491
JUDGE J. RONALD BOWMAN
CAROL A. PIETRYKOWSKI
CLERK OF COURTS

BROWNING-FERRIS INDUSTRIES)
OF OHIO AND MICHIGAN, INC.,)
P. O. Box 5069)
Point Place Station)
Toledo, Ohio 43611)
Plaintiff,)
vs.)
DAVID M. YEAGER,)
4805 Springbrook)
Toledo, Ohio 43615)
Defendant.)

AFFIDAVIT OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

KAREN SUMERACKI, being first duly sworn, deposes and says that she is employed with the firm of KITCH, SAURBIER, DRUTCHAS, WAGNER & KENNEY, P.C., and that on the 26th day of September, 1990, she personally served:

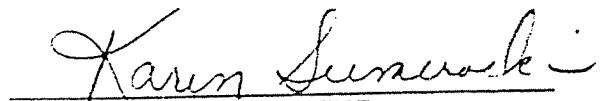
DEFENDANT'S ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT, AFFIRMATIVE DEFENSES, COUNTER-COMPLAINT and DEMAND FOR JURY TRIAL

upon:

by having same enclosed in an envelope with postage thereon fully prepaid and deposited in a United States postal receptacle.

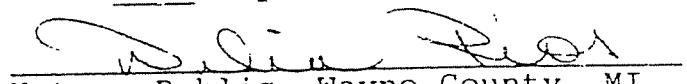
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Further, Affiant saith not.



KAREN SUMERACKI

Subscribed and sworn to before me
this 26th day of September, 1990.



Notary Public, Wayne County, MI
My Commission Expires: Dec 29, 1992

FILED
LUCAS COUNTY, OHIO

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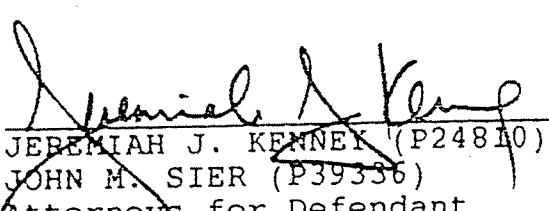
BROWNING-FERRIS INDUSTRIES
OF OHIO AND MICHIGAN, INC.)
P. O. Box 5069)
Point Place Station)
Toledo, OH 43611)
CLERK OF COURTS Case No.: 90-2491
CAROL A. PILTRAKOWSKI Hon. J. Ronald Bowman
Plaintiff,)
v)
DAVID M. YEAGER)
4805 Springbrook)
Toledo, OH 43615)
Defendant-Counter Plaintiff,)
v)
BROWNING-FERRIS INDUSTRIES OF)
OHIO AND MICHIGAN, INC.)
Plaintiff-Counter Defendant.)

DEMAND FOR JURY TRIAL

NOW COMES the defendant-counter plaintiff DAVID M. YEAGER, by and through his attorneys, KITCH, SAURBIER, DRUTCHAS, WAGNER & KENNEY, P.C., and hereby demands a trial by jury of the above-captioned matter.

KITCH, SAURBIER, DRUTCHAS,
WAGNER & KENNEY, P.C.

BY:


JEREMIAH J. KENNEY (P24810)
JOHN M. SIER (P3936)
Attorneys for Defendant
Tenth Floor
One Woodward Avenue
Detroit, Michigan 48226
(313) 965-2915

DATED: September 26, 1990

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